

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff)	
)	
V.)	CIVIL ACTION NO.
)	
CITY OF CHICOPEE)	
)	
Defendant)	

COMPLAINT

The United States of America, through its undersigned attorneys, and at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

INTRODUCTION

1. This is a civil action brought against the City of Chicopee, Massachusetts ("City") pursuant to Sections 309(b) and (d) of the Clean Water Act ("CWA" or the "Act"), 33 U.S.C. §§ 1319(b)&(d).

2. The claims arise from the City's failure to comply with its National Pollutant Discharge Elimination System permits issued in accordance with Section 402 of the CWA, 33 U.S.C. § 1342.

3. This court has jurisdiction over the subject matter of this action pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. §§ 1319(b) & (d) and pursuant to 28 U.S.C. §§ 1331, 1345 & 1355.

4. Venue is proper in this district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and pursuant to 28 U.S.C. §§ 1391(b) & (c), and 1395.

5. Notice of the commencement of this action has been given to the Commonwealth of Massachusetts pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

DEFENDANT

6. The City of Chicopee is a municipality incorporated under the laws of the Commonwealth of Massachusetts.

7. The City of Chicopee is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

INTERVENING PLAINTIFF

8. Section 309(e) of the Act, 33 U.S.C. § 1319(e), provides:

Whenever a municipality is a party to a civil action brought by the United States under this section, the State in which such municipality is located shall be joined as a party. Such State shall be liable for payment of any judgment or any expenses incurred as a result of complying with any such judgment entered against the municipality in such action, to the extent that the laws of that State prevent the municipality from raising revenues needed to comply with such judgment.

The Commonwealth of Massachusetts has committed to join this action pursuant to Section 309(e) of the Act, 33 U.S.C. § 1919(e), as an intervening plaintiff. The United States

reserves all claims which it may have against the Commonwealth under Section 309(e).

NPDES PERMIT

9. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters of the United States except in compliance with the terms and conditions of an national pollutant discharge elimination system ("NPDES") permit issued pursuant to CWA § 402, 33 U.S.C. § 1342.

10. Section 402 of the Act, 33 U.S.C. § 1342, provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of any pollutant into the navigable waters of the United States upon such specific terms and conditions as the Administrator may prescribe.

11. On September 29, 1995, pursuant to Section 402 of the Act, 33 U.S.C. § 1342, NPDES Permit No. MA0101508 was issued to the City for discharges from the City's wastewater treatment plant and combined sewer overflow outfalls to the Connecticut and Chicopee Rivers.

12. On May 17, 2005, pursuant to Section 402 of the Act, 33 U.S.C. § 1342, NPDES Permit No. MA0101508 was issued to the City for discharges from the City's wastewater treatment plant and combined sewer overflow outfalls to the Connecticut and Chicopee Rivers, thereby superseding the permit issued on September 29, 1995.

13. The City's combined sewer overflow outfalls are "point sources" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

14. The Connecticut and Chicopee Rivers are "navigable waters" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

COUNT 1

NPDES Permit Violations - Wet Weather CSO Discharges

15. The United States realleges and incorporates by reference the allegations of paragraphs 1 through 14 above as though fully set forth herein.

16. At all times material to this complaint, the City's NPDES permits have provided that wet weather combined sewer overflow discharges must not cause violations of water quality standards.

17. Since at least September 29, 1995, during certain rainfall events, the City has discharged wastewater from its combined sewer overflow outfalls that caused violations of water quality standards violations in the Connecticut and Chicopee Rivers.

18. The wastewater the City discharged to the Connecticut and Chicopee Rivers from the City's combined sewer overflow outfalls during wet weather events contained "pollutants" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

19. By discharging wastewater that caused violations of water quality standards in the Connecticut and Chicopee Rivers in violation of its NPDES permits, the City violated the terms and condition of a permit issued under Section 402 of the Act and, therefore, violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

COUNT 2

NPDES Permit Violations - Dry Weather Overflows

20. The United States realleges and incorporates by reference the allegations of paragraphs 1 through 14 above as though fully set forth herein.

21. At all times material to this complaint, the City's NPDES permits have provided that dry weather overflows from combined sewer overflow outfalls are prohibited.

22. Since at least September 29, 1995 through September 2001, on frequent occasions, during dry weather, the City discharged wastewater from its combined sewer overflow outfalls.

23. The wastewater the City discharged to the Connecticut and Chicopee Rivers from the City's combined sewer overflow outfalls during dry weather contained "pollutants" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

24. By discharging wastewater from combined sewers during dry weather to the Connecticut and Chicopee Rivers in violation

of its September 29, 1995 NPDES permit, the City violated Section 301(a) of the Act, 33 U.S.C. §1311(A).

RELIEF SOUGHT

Wherefore, Plaintiff, the United States of America, respectfully requests that the Court grant the following relief:

1. Order the City of Chicopee to eliminate discharges from its collection system that cause violations of water quality standards in the Connecticut and Chicopee Rivers;
2. Order the City of Chicopee to eliminate excessive inflow and infiltration from its collection system;
3. Order the City of Chicopee to operate its wastewater treatment facility to maximize pollutant removal;
4. Order the City of Chicopee to pay a civil penalty not to exceed \$25,000 per day per violation occurring before January 30, 1997, \$27,500 per day per violation occurring between January 30, 1997 and March 15, 2004, and \$32,500 per day per violation occurring on or after March 16, 2004 (with the maximum civil penalty for per-day violations increased from \$25,000 to \$27,500 to \$32,500 as a result of the Debt Collection Improvement Act of 1996); and
5. Grant such other relief as the Court deems just and proper.

For the United States of America,

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Dated: _____